IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6515 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHUHPRAYAG CO-OP. HOUSING SOCIETY LTD.

Versus

RAMBAHADUR KISHANBAHADUR

Appearance:

1. Special Civil Application No. 6515 of 2002

MR DIPEN A DESAI for Petitioner No. 1

MR ND SONGARA for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 24/03/2003

ORAL JUDGEMENT

The present petition is filed by Shubhprayag Cooperative Housing Society Limited being aggrieved of

the judgment and award passed by the learned Judge of the Labour Court, Ahmedabad in Reference (LCA) No.1650 of 1992 dated 10.10.2001. The learned Judge was pleased to order reinstatement of the respondent workman on his original post with full back wages and continuity of service and was also pleased to order payment of Rs.500/-, towards cost of the proceedings.

2. The facts of the case are that the petitioner society is a cooperative society wherein the respondent workman was working as a Watchman -- cum -- Pump Operator for the last many years. The respondent workman was in the habit of not only being irregular in discharge of his duties but also irresponsible inasmuch as he used to leave the water pump unattended and go away. The petitioner society has produced on record a copy of letter dated 13.5.1990 written by the respondent workman to the Chairman of the petitioner society wherein it is stated that on 10.5.1990 he had left the pump unattended and it was only on 13.5.1990 that he came back and wrote a letter seeking pardon. He also gave assurance in the said letter that in future this type of behaviour will not be repeated. Despite that on 6.4.1992 he again left the place of service and leaving the water pump unattended which caused hardship to the members of the petitioner society. The petitioner society was required to convene a meeting of the Managing Committee on the same day. As it was noticed that keeping the water pump running, the respondent workman had eloped form the place of service without any intimation to any person much less the office bearer of the society about his abandoning the job. The petitioner society had written a letter dated 7.4.1992 at the address available with it, supplied by the respondent workman, but on that address the said letter could not be served as the respondent workman was not available.

3. On 8.4.1992 the petitioner society had to write a request letter to its members to bear with the inconvenience caused on account of the irresponsible behaviour of the respondent workman as he had left the job at 8.00 PM without any intimation to anybody. It was also intimated that the responsibility of operating the water pump was assigned to some of the members because the other employees of the society were not able to shoulder this responsibility. Having realised that the respondent workman is not served with the letter written by the society a meeting of the managing committee was again convened on 25.4.1992 wherein a resolution was passed that as the letter despatched on the address of the respondent workman available with the society is not

served, and despite the fact that when the respondent workman had visited the society, the Secretary of the society had given him oral instructions to report for duty with immediate effect, but he has not reported for the duty. The society decided to publish a notice in a newspaper. Accordingly a notice was published in the newspapers on 30.4.1992, a copy of which is produced at Annexure 'G' to the petition.

4. The respondent workman approached the Labour Court by filing the aforesaid reference wherein the learned Judge of the Labour Court without taking into consideration the vital aspect/s of the matter very cursorily turned down the contention of the petitioner society that the petitioner society is a cooperative society registered under the Cooperative Societies Act and that it is not an 'industry' under the definition of the term under the Industrial Disputes Act. Without giving any cogent reasons the learned Judge has held that the petitioner society is, 'an industry' and that the petitioner society is/ was doing 'systematic activity'. What does the learned Judge mean by 'systematic activity' is not clear from the discussion in para 8 and therefore, the conclusion reached by the learned Judge that the petitioner society is an 'industry' is wholly untenable in law.

5. Mr.Songara, the learned advocate for the respondent workman relied upon the judgement of the Honourable the Apex Court in the matter of Krishi Utpadan Mandi Samiti Vs. Arvind Chaubey and another, reported in 2003 Supreme Court Cases (L&S) 28. Mr.Songara relied upon the Head Note 'C' of the judgement which reads as under:

> "Industrial Disputes Act, 1947 -- S.2(j) -- Whether appellant Mandi Samiti is an 'industry' -- Question not raised before Industrial Tribunal -- Held, not available to be canvassed higher up."

In the present case the question whether the petitioner society is an 'industry' or not was agitated before the learned Judge. The learned Judge has discussed the same in para 8 of the judgement. The learned Judge without giving any cogent reasons as to why he believed that the petitioner society is an 'industry' reached to that conclusion. The said conclusion is not only erroneous, but is also without any material in support of the same and the same being misconceived the judgement and award is required to be quashed. The same is quashed

and set aside. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)

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